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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,829	01/17/2001	Andrew Sjaak Landa	J3511(C)	6498

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 07/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/764,829

Applicant(s)

LANDA ET AL.

Examiner

Alton N. Pryor

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 2,3,5-10 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 2,3,5-10,12-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Applicant's arguments with respect to claims 2,3,5-10,12-23 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejection under 35 U.S.C. 112, 1st and 2nd paragraphs

I. Rejection of claims 2,3,5-10,12-23 under 35 USC 112, 1st will not be maintained in light of amendment filed 5/19/03. Applicant does have support for the phrase "soft solid" on page 20 lines 20-31 in the specification.

II. Rejection of claim 11 under 35 USC 112, 2nd paragraph will not be maintained in light of amendment filed 5/19/03. Claim 11 has been cancelled.

Claim Rejection under 35 U.S.C. 103(a)

I. Claims 2,3,5-10,12-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vu on record will be maintained for reasons on record and reasons as follows in light of amendment filed 5/19/03. New claim 24 is added to this rejection.

Vu teaches an anti-microbial cosmetic composition comprising an antiperspirant (aluminum chlorohydrate, aluminum-zirconium chlorohydrate), a transition metal chelator (DTPA) and solvent. Vu teaches that the composition can comprise a bactericide. It is inherent that a cosmetic composition is applied topically. See abstract, column 5 lines 8-30, column 6 lines 10-14, line 45 - column 8 line 49, claims 1,7.

Applicant argues that Vu's invention is toward clear gel stick compositions. Applicant argues that stick products are "relatively" hard. Claims are amended to include only "liquid or soft compositions" as opposed to stick compositions. Examiner argues that gel sticks are not necessarily hard. Note that Vu's composition is mainly liquid (70-95% liquid vehicle). Therefore, Vu's composition is not too hard, but is relatively soft. Applicant argues that Vu teaches that if the Vu's gel stick includes too little of the dibenzylidene alditol it may lack sufficient hardness. Applicant deduces from this statement that Vu is directed at stick products that are understood to be much harder than soft solid products. Examiner argues that Applicant

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has no support to make the conclusion that a gel stick can not fit the definition of being a soft solid. In addition, Applicant claims are open to using dibenzlidene alditol since Applicant's claims use "comprising" language.

Applicant argues that instant claims are restricted to Fe(III) chelators that are micro-molar active. Both the prior art and instant invention teach DTPA as a chelator. In terms of micro-molar active, Applicant provides no unexpected data for micro-molar amounts of the chelator. Where the prior art teaches the instant components of a composition being claimed with the exception of amounts, Applicant must show unexpected data for claimed amounts (micro-molar). Applicant argues that claims have been limited to iron chelators that Applicant has found to provide enhanced anti-microbial performance in the claimed product (soft solid). Applicant argues that this benefit could not have been predicted from Vu where chelating agents were used in a different form of product (gel sticks). Examiner argues that Applicant does not provide support for not defining gel sticks as a soft solids. Therefore, the product of Vu and the instant invention may be essentially the same.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2729. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

ALTON N. PRYOR
PRIMARY EXAMINER

Primary Examiner, AU 1616

7/17/03